



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

tion between the voting strength of the electors. The constitutionality of such a statute may, therefore, well be doubted.¹⁰

But a statute providing for preferential balloting presents a very different problem.¹¹ Here every elector has a right to vote for a candidate for every office to be filled. Moreover, in no way can an elector cast more than one effective vote for the same candidate. The ballots of the several electors are allowed exactly the same weight and effect. If a sufficient number of candidates do not receive a majority of first choice votes it is a violation of no right of the electors to declare that a resort may be had to the second choice votes in order to fill the deficiency.¹² The several choices of the several electors receive equal weight. This essential equality being preserved, it matters not that preferential voting was unknown at the time the constitution guaranteeing the right "to vote" was adopted, for the change is merely in pursuance of the undoubted legislative power to regulate the election machinery with a view to obtaining a more accurate registration of the electoral will. So, regardless of the constitutionality of the restricted vote or of the cumulative vote, the Minnesota court seems unnecessarily narrow in its decision invalidating the preferential voting legislation.¹³

RECENT CASES

ALIENS — EXCLUSION OF ALIENS — JUDICIAL POWER OF REVIEW — CONSTRUCTION OF STATUTE. — Under the immigration laws, "persons likely to become a public charge are to be excluded." 34 U. S. STAT. AT L. 898; as amended 36 U. S. STAT. AT L. 263. The petitioners were excluded under this provision by a Commissioner of Immigration on the ground that the industrial

¹⁰ It has been held unconstitutional. *Maynard v. Board*, 84 Mich. 228, 47 N. W. 756. See *State v. Thompson*, 21 N. D. 426, 443. And see *McCrary, Elections*, 4 ed., § 212. But see *People v. Nelson*, 133 Ill. 565, 27 N. E. 217.

¹¹ Under the statutes in the principal cases each elector is allowed to register a first choice, a second choice, and "additional" choices, but each voter may cast only one choice for a particular candidate. Upon the failure of the first choices to elect a sufficient number of candidates by a majority vote the second choices are added in. If still a sufficient number of candidates do not receive a majority of choices the "additional" choices are added in and the candidate receiving the greatest number of choices declared elected.

¹² It will be seen that an elector might give undue weight to his first choice by failing to exercise his other choices, that is, by failing to exercise his complete franchise. But this overweight is an incident of the elector's abuse of the franchise and is attainable under the ordinary system of voting wherever several candidates are to be elected. Moreover, a state may require that no vote be counted unless the elector has exercised his complete franchise. *Farrell v. Hicken*, *supra*, 125 Minn. 407, 147 N. W. 815.

¹³ *Adams v. Lansdon*, 18 Idaho 483, 110 Pac. 280, presents a situation similar to that seen in the principal cases, except that the case involved a primary election. Ordinarily a primary election is held not to be an election within the general suffrage provisions of the constitutions. *Montgomery v. Chelf*, 118 Ky. 766, 82 S. W. 388. But the court did not make this point in upholding the law. And see *State v. Nichols*, 50 Wash. 508, 97 Pac. 728, another case of a primary election, but supporting the constitutionality of preferential voting in a strong *dictum*.

conditions at their destination would render it impossible for them to obtain employment. *Held*, that this is an improper ground of exclusion. *Gegiow v. Uhl*, 238 U. S. 620.

It is clear that the decision of a Commissioner of Immigration as to questions of fact is final, subject only to an appeal to the Secretary of Labor. *Lee Lung v. Patterson*, 186 U. S. 168; *Zakonaile v. Wolf*, 226 U. S. 272. It was on this ground that the lower court refused a writ of *habeas corpus* in the principal case. *Gegiow v. Uhl*, 211 Fed. 236, 215 Fed. 573. But immigration officials cannot finally adjudicate questions of law. Thus where the question is one of due process as to whether or not there has been a fair hearing the courts have a power of review. *Chin Yow v. United States*, 208 U. S. 8. Similarly, a finding that a citizen of Porto Rico is an alien within the meaning of the immigration laws is reviewable. *Gonzales v. Williams*, 192 U. S. 1. See 17 HARV. L. REV. 412. The question of statutory construction involved in the principal case falls within the same category. The court interpreted the statute as meaning that under the clause in question an immigrant could be excluded only because of some personal deficiency, and not because of an external state of facts over which he has no control. The decision is important as reversing a long-standing administrative interpretation of a clause of the Immigration Act under which more aliens are excluded than under all the others combined. See (1914) ANN. REPORT OF SECRETARY OF LABOR, 64.

BILLS AND NOTES — FORMAL REQUISITES — FICTITIOUS PAYEE: CHECK TO FICTITIOUS PAYEE DRAWN BY AGENT WITH NO AUTHORITY TO DRAW CHECKS PAYABLE TO BEARER. — The United States deposited funds in the defendant bank to be drawn on by a government agent for his authorized expenses, but only by checks in favor of the party by name, to whom payment was to be made. The agent drew checks payable to fictitious payees, and indorsed them in their names. The defendant bank cashed these checks. The agent used part of the proceeds to pay his authorized expenses and misappropriated the remainder. The government sued the defendant bank for the amount of the checks. *Held*, that it may recover the full amount. *National Bank of Commerce v. United States*, 224 Fed. 679 (C. C. A., 9th Circ.).

A bank, regardless of due care, can charge a depositor only with disbursements made on his order and in conformity with the words of the instrument. *Mechanics' National Bank v. Harter*, 63 N. J. L. 578, 44 Atl. 715; *Winslow v. Everett National Bank*, 171 Mass. 534, 51 N. E. 16. See 22 HARV. L. REV. 605. Again, one who deals with a government agent is charged with notice of all the limitations on the agent's authority. *The Floyd Acceptances*, 7 Wall. (U. S.) 666. But an agent acting within his authority can bind his principal regardless of his intent, if the third party acts in good faith. *North River Bank v. Aymar*, 3 Hill (N. Y.) 262. Still in the principal case, if the checks were payable to bearer, they were outside the agent's authority, and so did not bind the government. Both at common law and under the Negotiable Instruments Law, an instrument payable to a fictitious payee is in legal effect payable to bearer. *Minet v. Gibson*, 1 H. Bl. 569; *Foster v. Shattuck*, 2 N. H. 446. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 12. See 22 HARV. L. REV. 141. But on principle the instrument is payable to the order of the drawer or maker under the fictitious name, and his indorsement passes a good title. See 7 HARV. L. REV. 494. Under this view the bank here would escape liability. And even though the checks were outside the agent's authority, the bank should not be liable for the amount that the government drew out and retained, for a principal by retaining the benefits of his agent's unauthorized act after learning all the facts, thereby ratifies the transaction. *Reid v. Rigby & Co.*, [1894] 2 Q. B. 40; *First National Bank of Las Vegas v. Oberne*, 121 Ill. 25, 7 N. E. 85. *Contra*, *Spooner v. Thompson*, 48 Vt. 259.